IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No. 55 of 2006.

Date of Decision: 11.7.2006.

Ram Bhajan Singh …Petitioner.

Versus.

Brij Bala Kuthiala .. Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. Bhupender Gupta, Sr.Advocate with Mr. Janesh Gupta, Advocate.**

For the Respondent(s): **Mr. Vinay Kuthiala, Advocate.**

Deepak Gupta, J. (Oral)

This revision petition under Section 24(5) of the H.P.Urban Rent Control Act, 1987 has been filed against the order passed by the learned Appellate Authority, Shimla in Civil Misc. Appeal No. 59-S/14 of 2003 decided on 17.3.2006 whereby he has affirmed the order of eviction passed by the learned Rent Controller (I), Shimla in Case No.50/2 of 2000 dated 1.8.2006.

For the reasons stated herein-below, it is not necessary to enter into the facts of the case and the matter can be decided on a short question raised before me.

Mr. Bhupender Gupta learned senior counsel for the petitioner has submitted that the learned lower appellate court has gravely erred in not deciding the application filed under Order 41 rule 27 CPC filed before it and, therefore, the order of the learned appellate court is liable to be set aside on this short ground

On the other hand Mr. Vinay Kuthiala has contended that the applications under Order 26 rule 9 CPC and 41 rule 27 CPC filed were virtually identical and the application for leading additional evidence is deemed to have been dismissed vide order dated 13.3.2006.

On perusal of the record, it is apparent that an application filed before learned appellate authority under Order 41 rule 27 CPC has not been decided by it. The only applications decided vide order dated 13.3.2006 are application under Order 151 CPC and application under Order 26 rule 9 CPC. In my opinion, it is the duty of any Presiding Officer to pass a specific order on each and every application and he cannot leave the parties or the higher courts to guess whether an application has been decided or not. The learned appellate authority was bound to decide the application under Order 41 rule 27 CPC along with the main matter itself or vide a separate order. Some order should have been passed on the application under Order 41 rule 27 CPC. Therefore, without expressing any opinion on the merits of the case and rival contentions of the parties, the order of the learned appellate authority dated 13.3.2006 is set aside with a direction to re-hear the appeal on merits along with the application under Order 41 rule 27 CPC. The learned appellate authority may either decide both, the main appeal and the application, by a common order or by separate orders.

It is made clear that the application filed under Order 26 rule 9 CPC will not be re-opened before the learned appellate authority. However, in case the final order is against the tenant, he can challenge the order passed on the said application by the appellate authority in proceedings before this Court.

Parties through their counsel are directed to appear before the learned appellate authority on 1st August, 2006. The registry shall ensure that the records are remitted to the learned appellate authority well before the said date fixed. The learned appellate authority shall make an endeavour to dispose of the case as expeditiously as possible and in any event not later than 30th September, 2006.

The revision petition is allowed in the aforesaid terms. No costs.

July 11, 2006.
s.

(Deepak Gupta),
Judge.